

application. The Examiner has therefore requested that the arcuate shape be shown in the drawings, or the feature be cancelled from the claims. In addition, claims 1 through 10 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because allegedly the structural relationship between the parts of the lid is not clearly set forth therein. The Examiner has suggested that the term - - radially - - be inserted before "inwardly", presumably in claim 1, page 12, line 10. Claim 11 and claims 17 through 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Feltman III et al. (U.S. 5,680,951); and claims 12 through 16 have been rejected under the combined teachings of Feltman III and United States Patent No. 1,907,254 to Dodge. Claim 21, which depends from claim 20, which itself depends from independent claim 11, has been indicated as being allowable if rewritten in independent form so as to include all of the limitations of the base claim 11 and intervening claim 20 from which it depends. Claims 1 through 10 appear to be allowable if rewritten or amended to overcome the rejections under Section 112. For the reasons set forth below, the rejections and objections are traversed.

With respect to the objection to the drawings, it is presumed that the Examiner is referring to the phrase "a arcuately, downwardly directed timing cam projection on the cap member" set forth in dependent claims 3 and 13 in the pending application. The recited phrase refers to the timing cam projection 48 described at page 7, lines 8 through 12, and as best seen in Figure 5. The timing cam projection is believed to be shown in Figure 5 as being arcuate in shape and thus claims 3 and 13 are fully supported by the drawings. Nevertheless, the Applicants hereby authorize the Examiner to delete the phrase "arcuately shaped" by Examiner's Amendment in Claims 3 and 13 if the Examiner disagrees with the

above analysis and should the Examiner further agree that the Amendment is of a broadening, rather than a narrowing, nature.

Claims 1 through 10 have been rejected under 35 U.S.C. § 112, second paragraph, because allegedly the structural relationship between the parts of the lid is not clearly set forth. The Examiner has suggested that the term - - radially - - be inserted before "inwardly", presumably in claim 1, page 12, line 10. When interpreted in light of the specification, the claims are deemed to be definite. Specifically, the Applicants throughout the specification have consistently used the terms "inwardly", "outwardly", "upper" and "lower" with reference to the drawings (see pages 6 through 8). Thus, one of ordinary skill in the art, upon reviewing the claims and attendant specification, has a full understanding as to the Applicants' meaning as to the term "inwardly-directed" in claim 1. It is to be noted that the very prior art cited by the Examiner (namely, U.S. Patent No. 5,680,951 to Feltman III et al.) uses similar terminology (e.g., "outwardly projecting hook at the ends of the fingers for latching the rings together", "upwardly directed opposed tabs 24", column 2, lines 23, 24; and "flexing one or more fingers inwardly and pushing the lid upward relative to the cap" column 2, lines 33 to 36). Thus, those of ordinary skill in this art understand the terms "inwardly," "outwardly," "upwardly," and "downwardly" as applied to lids for mugs. Thus, the rejection under Section 112 must be rescinded. Nevertheless, should the Examining Attorney agree that the addition of the word "radially" to claim 1 is a clarifying and not narrowing amendment, then the Examiner is pre-authorized to make this amendment by Examiner's Amendment.

Independent claim 11 and claims 17 through 20 which depend therefrom have been rejected under 35 U.S.C. § 103 (a) in view of the Feltman III et al. reference (U.S. Patent

No. 5,680,951). Feltman discloses a two-piece lid for an insulated mug wherein the upper and lower portions of the lid are co-joined by downwardly directed resilient fingers 27 having inwardly directed hooks 28 which secure the upper portion of the lid 21 to the lower portion 20. The lid is provided with two rotary positions, open and closed. The upper portion 21 may be removed from the lower portion 20 by inwardly depressing the resilient fingers 27 so as to release the hooks 28 from the lower portion 20. The lid shown in Feltman III lacks numerous structural features recited in independent claim 11 and claims 17 through 20 which depend therefrom. In the first instance, it is to be noted that the lid recited in independent claim 11 includes a base member having a floor region which defines the claimed upper and lower surfaces and drinking and venting apertures of the base. The base member is claimed in conjunction with a circular cap member for rotational engagement with the base member, whereby the cap member defines a depressed drinking basin having upper and lower surfaces and drinking and venting apertures positioned and sized so as to correspond to the drinking and venting apertures of the base member. Thus, when co-joined, the claimed base member and circular cap define two surfaces which are spaced apart as best seen in Figure 7. It should be remembered that in the preferred embodiment of the invention the claimed lid is to be used with an insulated tumbler or mug for hot or cold beverages. Thus, mugs of this type are typically double-walled, often vacuum-insulated. Thus, the claimed "floor region defining upper and lower surfaces" on page 15, lines 1 through 2, in conjunction with the claimed circular cap member, provides a double-wall construction for the top of the cup or tumbler, providing superior thermal insulation. As seen in the drawings of Feltman III, only the lid 21 has a floor region to thermally insulate the double-wall mug shown in the drawings. Thus, the claimed structure

of the invention as recited in independent claim 11 is neither taught nor suggested by the structure shown in Feltman, and the claimed structure results in enhanced functionality for the invention's purpose. For this reason alone, the rejection of claim 11 must be rescinded.

Independent claim 11 also includes limitations with respect to the seal means in the ultimate paragraph of the claim on page 15, lines 12 through 23. Specifically, the claimed seal means fluidly isolates the interstitial areas between the cap and base members (to prevent fluid contamination therebetween) when the cap member is in both the first, closed position as well as the second, open position. This is important in maintaining the hygiene of the claimed invention, which is a significant object of the invention as set forth in the application specification. It should be noted that the seals set forth in Feltman III (see Figure 5, reference numerals 44, 45 and 46) do not isolate the interstitial areas of that device from fluid which may be resident in the drinking basin of the cap when the device is in the closed position as does the structure of the claimed invention. More specifically stated, it should be noted that when a user drinks from the invention recited in independent claim 11 or the device shown in Feltman, residual fluid (e.g., coffee) remains in the drinking basin. Should this fluid find its way back into the drinking apertures, the claimed invention seals the interstitial areas between the cap members in both the open and closed positions. Thus, fluid will not leak back in between the two portions even when the claimed invention is in the closed position. In contrast, the sealing mechanism shown in Feltman III (and described at column 3, lines 6 through 20 of the '951 patent) would permit fluid to flow back into the areas between seals 45 and 46 when the lid of Feltman III is in the closed position shown in Figure 2. Thus, the claimed invention recites structure in the means plus function format which is not shown, taught or suggested either by Feltman

or any of the other references which have been cited but not relied on. Thus, the rejection of claim 11 and the claims which depend therefrom must be rescinded.

Claims 12 through 16 have been rejected under 35 U.S.C. § 103 over Feltman III, as discussed above, in view of United States Patent No. 1,907,254 to Dodge. The Dodge reference is directed to a cap for bottles, jars, and the like in which a liquid or air-tight closure is essential. The device disclosed in Dodge (in a fashion similar to the device of Feltman III) is essentially a two-position device, yet claim 12 (and the claims which depend therefrom) recite a three-position lid. That is, Dodge only discloses an open and a closed position wherein the lid 6 is removable in the open position and non-removable when the lid is closed. Similarly, Feltman discloses an open position when apertures 39 and 41 are in registration and a closed position when the apertures are not in registration. The lid of Feltman III is not removable in a rotary fashion as is the invention recited in claim 12. That is, the lid of Feltman is only removable if the prongs are depressed and the lid is removed vertically. Feltman III suggests at column 2, line 36 that in an alternative construction mating threads could be provided on the rings 22, 23 in place of the fingers 27 and hooks 28 for joining the lid and cap. The claimed invention (claim 12) recites structure enabling the lid to rotate to a third, release position, yet Feltman does not disclose whether the rotation-limiting devices (or equivalent structures) 33, 34 would be retained so as to limit rotation between the two positions indicated in Figure 2. Thus, while the Examiner's proposed combination might be possible, there is no teaching or suggestion from the references themselves that such a combination is desired. That teaching or suggestion must be expressly disclosed in the cited references. *Fromson v. Advanced Offset Plate*, 755 F. 2d 1549, 1556 (Fed. Cir. 1985); *Kimberly Clark v. J & J*, 23 USPQ 603

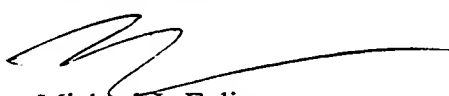
(Fed. Cir. 1984). Furthermore, it is difficult to conceive how the structure in Dodge would be combined with Feltman III's proposed threaded structure to result in the three-position lid as set forth in claim 12 of the pending application.

With respect to claims 13 through 19, the cited references, whether relied on or not, fail to show, teach or suggest the specific structure of the claimed invention. It should be noted that the Dodge reference fails to disclose any means for delimiting rotation of the cap in that if sufficient rotational torque is applied to the cap, the projection 9 will merely pass over the ridges until they encounter the openings 4 which permit the lid to be removed. It would appear that the Examiner has used the claimed invention as the roadmap for assembling a hypothetical device which is not disclosed by the mere combination of the references. The use of such hindsight is impermissible. For these reasons, the rejections of claims 12 through 20 must also be rescinded, in addition to the reasons stated above with respect to independent claim 11 from which those claims depend.

In view of the above, reexamination and reconsideration of the application is solicited at an early date. The Examiner is invited to contact the Applicant's representative by telephone at (206) 682-1600 to resolve any remaining issues.

Respectfully submitted,

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